

## § 1040.73

that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and useable by, handicapped persons.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

### § 1040.73 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient is to be designed and constructed in a manner that the facility or part of the facility is readily accessible to, and useable by, handicapped persons, if the construction was commenced after the effective date of this subpart.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this subpart in a manner that affects or could affect the usability of the facility or part of the facility is, to the maximum extent feasible, to be altered in a manner that the altered portion of the facility is readily accessible to and useable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

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(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 40515, June 13, 1980, as amended at 55 FR 52138 and 52140, Dec. 19, 1990]

### § 1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. The recipient shall exhaust subsection (b)(1) (methods to accomplish accessibility without building alterations or structural changes) before proceeding to subsection (b)(2) (methods to accomplish program accessibility resulting in building alterations). The recipient shall exhaust subsection (b)(2) (methods to accomplish accessibility resulting in building alterations) before proceeding to subsection (b)(3) (methods to accomplish accessibility resulting in structural changes).

(1) *Methods to accomplish accessibility without building alterations or structural changes.* The recipient shall investigate compliance methods which do not alter the historic character or architectural integrity of the property and shall utilize such methods unless such methods are ineffective in achieving accessibility. Such methods may include, but are not limited to:

(i) Reassigning aid, benefits, or services to accessible locations within the facility.

(ii) Assigning persons to aid handicapped persons into or through an otherwise inaccessible facility.

(iii) Delivering aid, benefits, or services at alternative accessible sites operated by or available for such use by the recipient.

(iv) Adopting other innovative methods which make aid, benefits, or services accessible to the handicapped.

(2) *Methods to accomplish accessibility resulting in building alterations.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(1)

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prior to utilizing building alteration as a method of accomplishing program accessibility. Alterations must comply with the accessibility standards adopted in these regulations. Building alterations shall be undertaken so as not to alter or destroy historically, architecturally, or culturally significant elements or features.

(3) *Methods to accomplish accessibility resulting in structural changes.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(2) before considering structural changes as a method of accomplishing program accessibility. Structural changes must comply with the accessibility standards adopted in these regulations. Structural changes shall be undertaken so as not to alter or destroy historically, architecturally or culturally significant elements or features.

(b) *Modification or waiver of accessibility standards.* The applicability of the accessibility standards set forth in these regulations may be modified or waived on a case-by-case basis, upon application to the Director, FAPD, where the recipient can demonstrate that, because of the nature of the activity, the provision of access would be infeasible or would substantially impair the historic, architectural or cultural integrity of the historic property.

(National Historic Preservation Act of 1966, Pub. L. 89-665, 80 Stat 915, 16 U.S.C. 470; 11593, 3 CFR 1971 Comp., p. 154; 36 CFR part 800)

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

### Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

AUTHORITY: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

SOURCE: 50 FR 8089, Feb. 27, 1985, unless otherwise noted.

#### GENERAL PROVISIONS

##### § 1040.81 Purpose.

The purpose of these regulations is to implement the Age Discrimination Act of 1975, as Amended, which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. In accordance with the Age Discrimination Act, federally assisted programs or activities and recipients of Federal funds may continue to use age distinctions and factors other than age which meet the requirements of the Act and these regulations.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

##### § 1040.82 Application.

(a) These regulations apply to each program or activity which receives Federal financial assistance provided by DOE.

(b) These regulations do not apply to—

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

##### § 1040.83 Definitions.

(a) *Act* means the Age Discrimination Act of 1975 as amended title III of Pub. L. 94-135, 42 U.S.C. 6101 *et seq.*

(b) *Action* means any act, activity, policy, rule, standard or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is or the number of years from the date of a person's birth.